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March 1, 2011

*Via Regular U.S. Mail Delivery and Facsimile at (407)244-5690
Via Electronic Mail Delivery at Chris.Carmody@Gray-Robinson.com*

Chris Carmody, Esq.
Gray Robinson
301 East Pine Street, Suite 1400
Orlando, FL 32802-3068

Re: Letter of Protest filed by AMR
Sumter County Request for Proposal: RFP # 172-0-2010/AT
Emergency Ambulance Services

Dear Mr. Carmody:

As you are aware, this Firm has the pleasure of representing the Sumter County Board of County Commissioners ("County"). Please allow this correspondence to supplement Sumter County's attempt to resolve the aforementioned protest by mutual agreement pursuant to Florida Statute §120.57(3)(d)1, as well as Section 906 of Sumter County's Purchasing Policy.

Sandra Howell, the Assistant County Administrator, has continued to satisfy her obligation under the aforementioned purchasing policy as well as the requirements of relevant Florida Statutes. As we have discussed, while the County is interested in resolving all disputes by mutual agreement, there are times when mutual agreement is not possible. In this particular protest, American Medical Response, Inc. ("AMR") has requested the disqualification of Rural/Metro Corporation of Florida, Inc. ("Rural"), or the rescoring of the bids. After reviewing AMR's bid protest, evaluating the facts (including the materials submitted by AMR) and otherwise attempting to resolve the bid protest in a manner that attempts to address the interests of all parties, Mrs. Howell has determined that neither of the options presented by AMR in furtherance of a mutual agreement are acceptable to the County. Therefore, Mrs. Howell has determined that the only resolution acceptable to the County is the voluntary withdrawal by AMS of its formal bid protest. Short of this voluntary withdrawal, it is Mrs. Howell's recommendation and decision to deny AMR's bid protest and refer this matter to the Department of Administrative Hearings.

In accordance with the County's Purchasing Policy, Mrs. Howell would also incorporate her final findings regarding this matter into this correspondence. Specifically, Mrs. Howell has considered AMR's allegations that its competitor, Rural/Metro Corporation of Florida Inc. ("Rural") committed fraud in its Proposal to Sumter County. With regard to AMR's first point of protest, "Procedural Issues", AMR alleges that Rural "expressly" violated both the requirements and the intent of the Sumter County Code, the Florida Statutes and relevant Florida case law." AMR further alleges that Rural violated Sumter County's purchasing policy by making certain misrepresentations in its proposal and then executing the certification contained in the RFP, which states as follows:

"I certify that this quote is made without prior understanding, argument, or connection with any corporation, firm or person submitting an RFP for the same material, supplies, equipment or services and is in all respects fair and without collusion or fraud."

It should be noted that the above certification, taken directly from the Sumter County RFP Application, deals with protecting the integrity of the public bidding process. It is designed to prevent collusion amongst competitors, and to prevent collusion between bidders and government officials. Generally speaking, the public bid process is designed to protect the public against collusive contracts; to secure fair competition upon equal terms to all bidders; to remove not only collusion, but temptation for collusion and opportunity for gain at public expense; to close all avenues to favoritism and fraud in various forms; to secure the best values for the public at the lowest possible expense; and to afford an equal advantage to all desiring to do business with the government, by affording an opportunity for an exact comparison of bids. *Webster v. Belote*, 103 Fla. 976, 138 So. 721, 723-24 (Fla. 1931); *Harry Pepper & Associates, Inc. v. City of Cape Coral*, 352 So.2d 1190, 1192 (Fla. 2d DCA 1977).

In soliciting and accepting competitive bids or proposals, the County has wide discretion. See *D.O.T. v. Groves-Watkins Constructors*, 530 So.2d 912, 913 (Fla. 1988); *Liberty County v. Baxter's Asphalt & Concrete, Inc.*, 421 So.2d 505, 507 (Fla. 1982). Its discretion with respect to these matters, while broad, is not unbridled. However, the County must exercise its discretion in a manner that is not illegal, dishonest, fraudulent, arbitrary, unreasonable, capricious or in any other way that would subvert or undermine the purpose and object of competitive bidding. *D.O.T. v. Groves-Watkins Constructors*, 530 So.2d 912 (Fla. 1988); *Liberty County v. Baxter's Asphalt & Concrete, Inc.*, 421 So.2d 505 (Fla. 1982). It may not, for instance, accept a bid or proposal that is materially at variance with the specifications set forth in the invitation for bids or request for proposals. The First DCA has held that "Although a bid [or proposal] containing a material variance is unacceptable, not every deviation from the bid is material. It is only material if it gives the bidder a substantial advantage over the other bidders and thereby restricts or stifles competition." *Tropabest Foods, Inc. v. Department of General*

Services, 493 So.2d 50, 52 (Fla. 1st DCA 1986). The Third DCA went on to hold that if the variance does not provide the bidder with such a palpable competitive advantage, it constitutes a minor irregularity that should be waived by the agency. See *Robinson Electrical Co., Inc. v. Dade County*, 417 So.2d 1032, 1034 (Fla. 3d DCA 1982).

The basis of AMR's contention that Rural committed fraud in the bid process and violated the certification is that Rural copied and submitted sections of one of AMR's bid proposals to the City of Orlando. AMR further contends that the Orlando proposal was its proprietary work product. AMR bases this claim on the fact that one of its former employees, David Lindberg, worked with a consultant, Dr. Jeff Goldberg, to provide the information which was submitted in the City of Orlando proposal, and that Mr. Lindberg is currently an employee of Rural. AMR has implied that Mr. Lindberg took proprietary and copyrighted information to its competitor, Rural, which Rural later used in its proposal to Sumter County. These allegations raise several questions, including whether Mr. Lindberg was the original author of those portions of the proposal(s) at issue, whether Mr. Lindberg used proprietary information of AMR in assisting Rural with its' bid proposal to the County and whether there were any restraints on trade in place between Mr. Lindberg and AMR which would have precluded Mr. Lindberg from working with one of its competitors.

In order to properly evaluate AMR's claims, Mrs. Howell requested the following information:

- A. Documentation reflecting any type of Confidentiality Agreement or Non-Compete Agreement between it and Mr. Lindberg which would preclude the dissemination of the information at issue, or which would preclude Mr. Lindberg's employment with Rural.
- B. Documentation which indicates that the consulting work Dr. Goldberg performed for AMR resulted in a proprietary process which is unique to AMR's operations.
- C. Documentation documenting any Copyright applications or Certificates of Copyright for any of AMR's applications, models or methods.

As of this date, AMR has failed or refused to supply any of the documentation requested above in support of its position. In addition, it is the County's position that the alleged "copying" of certain portions of AMR's City of Orlando proposal is not the type of "fraud and collusion" contemplated by the County's Purchasing Policy or the case law cited above. Thus, Mrs. Howell, on behalf of Sumter County, has determined that the current dispute between AMR and Rural does not involve the County or its purchasing policies; but rather, a civil dispute between Rural and AMR for which each of the parties

has an adequate remedy at law. For these reasons, Mrs. Howell's decision is to deny AMR's first point of protest.

With regard to AMR's second point of protest, "Committee Errors", AMR alleges that the Committee allowed Rural to revise its proposal to provide dispatch in Sumter County rather than in Orlando and allowed Rural to claim as its own, portions of AMR's Orlando proposal, thereby tainting the scoring process.

The Florida Supreme Court has held that with respect to those matters that have been timely raised by a protesting bidder or proposer, "the scope of inquiry is limited to whether the purpose of competitive bidding has been subverted." The hearing officer's sole responsibility is to ascertain whether the County (in this case) acted fraudulently, arbitrarily, illegally, or dishonestly. *D.O.T. v. Groves-Watkins Constructors*, 530 So.2d 912 (Fla. 1988); *Fort Howard Company v. Department of Management Services*, 624 So.2d 783, 784 (Fla. 1st DCA 1993). See also *Moore v. Department of Health and Rehabilitative Services*, 596 So.2d 759, 761 (Fla. 1st DCA 1992)(inappropriate "for the hearing officer [in a bid protest proceeding] to make a de novo evaluation of the bids."

In addition, the Florida First DCA, with regard to the evaluation of the decisions of bid committees has held that "The Hearing Officer need not, in effect, second guess the members of the evaluation committee to determine whether he and/or other reasonable and well-informed persons might have reached a contrary result. Rather, a 'public body has wide discretion' in the bidding process and 'its decision, when based on an honest exercise' of the discretion, should not be overturned 'even if it may appear erroneous and even if reasonable persons may disagree.'" *Scientific Games, Inc. v. Dittler Brothers, Inc.*, 586 So.2d 1128, 1131 (Fla. 1st DCA 1991); see also *City of Cape Coral v. Water Services of America, Inc.*, 567 So.2d 510, 513 (Fla. 2d DCA 1990)("[e]ven where a public entity makes an erroneous decision over which reasonable persons may disagree, the exercise of its discretion in soliciting and accepting bids should not be interfered with absent a showing of dishonesty, illegality, fraud, oppression or misconduct"). See also *Board of Trustees of the Internal Improvement Trust Fund v. Levy*, 656 So.2d 1359, 1363 (Fla. 1st DCA 1995)("[t]he burden of proving abuse of agency discretion is upon the challenger of the rule, who must meet that burden with a preponderance of the evidence").

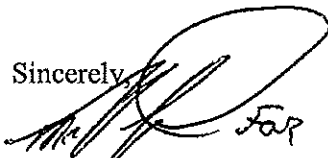
A review of the proposals, the Committee notes and scoring documents clearly indicates that the Committee acted appropriately with regard to the proposals and interviews in question, and therefore followed all applicable requirements of the law, the County's codes as well as its Purchasing Policy. There is no evidence to demonstrate that the Committee acted dishonestly, illegally, fraudulently, dishonestly or otherwise engaged in misconduct. Mrs. Howell finds no reason for the County to disqualify, re-score or otherwise re-bid RFP # 172-0-2010/AT as related to AMR's second point of protest. Accordingly, Mrs. Howell's decision is to deny AMR's second point of protest.

Based upon the investigation of the record evidence with regard to the allegations contained in AMR's Letter of Protest, and AMR's failure or refusal to substantiate any of

its allegations by providing the documentation referenced above, it remains Mrs. Howell's, and Sumter County's position that withdrawing the protest is the most amicable way to resolve AMR's bid protest, as it would dispense with the time and expense associated with an Administrative Hearing.

Please advise the undersigned, by noon on Thursday, March 3, 2011, whether your client is willing to formally withdraw its bid protest with regard to RFP # 172-0-2010/AT. Otherwise, the County will be forced to submit this protest to the Department of Administrative Hearings, pursuant to Florida Statute, §120.57(3), and request any and all relief afforded to Sumter County under the law.

Thank you for your prompt attention to this matter. I look forward to your response.

Sincerely,

George G. Angeliadis, Esq.
Counsel for Sumter County

Cc: Honorable Sumter County Board of County Commissioners
Sandra Howell, Sumter County
Assistant County Administrator